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ANTITERRORISM AND ARMS EXPORT AMENDMENTS ACT OF 1989

OCTOBER 26 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 347]

The Committee on Foreign Relations, to which was referred the bill (S. 347) To combat international terrorism and otherwise further the national security and foreign policy interests of the United States having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 347 is to amend the Arms Export Control Act, the Foreign Assistance Act of 1961, the Export Administration Act of 1979, and the Hostage Act of 1868 to achieve the following major objectives:

(1) To clarify and strengthen the prohibition on the export of military arms and equipment ("munitions items") to countries which the Secretary of State has determined repeatedly provide support for acts of international terrorism ("terrorist countries"), including the imposition of criminal and civil penalties for violations of the prohibition;

(2) To establish uniform standards in the Arms Export Control Act, the Foreign Assistance Act of 1961, and the Export Administration Act of 1979 for the designation of a country as one whose government repeatedly provides support for acts of international terrorism and for the President's authority to waive statutory prohibitions or to rescind the Secretary of State's determination;

(3) To require validated licenses for the export of any good or technology which could significantly contribute to the military po-

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tential of a terrorist country or could enhance that country's ability to support international terrorism;

(4) To require quarterly reports from the executive branch listing all Presidential consents to transfers of Munitions List items exceeding $1 million in value from a recipient country to a third country and to require quarterly reports, classified if necessary, of interagency transfers of Munitions List items which will not ultimately be disposed of within the United States but excluding from such reports those Munitions List items which are used solely in connection with intelligence activities and therefore subject to other reporting requirements under the National Security Act; and

(5) To clarify that the President's authority under the Hostage Act of 1868 to take action to release hostages cannot be carried out in a manner which would otherwise be prohibited by law.

S. 347 is largely a restatement of existing law, closing potential loopholes and revising certain existing provisions to ensure that uniform standards are present in the U.S. Code. The bill makes no attempt to reform the personnel or structure of the National Security Council or the State, Commerce, or Defense Departments. Nor does it seek to change the manner in which arms exports are approved by the U.S. Government or to impose blanket sanctions on terrorist states. The bill does not impair the President's discretionary authority. In fact, in some cases, the bill broadens the President's discretion while holding him to a reasonable standard of accountability to Congress in the exercise of that authority.

BACKGROUND

In 1986, Section 40 of the Arms Export Control Act was amended to ban the export of items on the U.S. Munitions List to any country which the Secretary of State determines repeatedly provides support for acts of international terrorism. A Presidential waiver is included in section 40 based on "national interests" of the United States. Any time such waiver authority is exercised, the President is required to report to Congress justifying the "national interests" and describing the proposed export.

Two months after enactment of this seemingly straightforward prohibition on exporting arms to terrorist states, 500 TOW missiles were shipped to Iran without notification to Congress. During the Iran/Contra investigation, repeated questions were raised as to the meaning and intent of section 40 and its relationship to other antiterrorism provisions in other laws.

Over the years, Federal law has absorbed overlapping standards that can lead to confusion and misinterpretation. There is no single standard in law for: (1) determining whether a country supports international terrorism; (2) identifying which U.S. official should make such a determination; (3) identifying which arms are subject to restrictions; (4) identifying the criteria that empower the President to waive statutory restrictions; and (5) informing Congress of arms exports, including covert exports. The inconsistent provisions of existing law have blunted the effectiveness of U.S. antiterrorism policy, both in terms of government actions and the activities of private American citizens who look to the law for guidance.

In the 100th Congress, Representative Howard Berman, Chairman Dante B. Fascell, Representative Lee H. Hamilton, and Representative Henry J. Hyde introduced a legislative proposal, H.R. 3651, which sought to sort out the somewhat vague and ambiguous antiterrorism statutes which currently make up our antiterrorism policy. After months of consultation with the House Permanent Select Committee on Intelligence, with representatives from the State Department, the Commerce Department, the Defense Department, and the Central Intelligence Committee, and with representatives of the private sector, the House Foreign Affairs Committee adopted an amendment in the nature of a substitute to H.R. 3651 offered by Congressman Berman and Congressman Hyde. That legislation was adopted by the House of Representatives on three separate occasions in the last Congress.

In September 1988, Senators Kerry, Lugar, and Lautenberg introduced companion legislation in the Senate, S. 2776. The Senate Foreign Relations Committee held a hearing on S. 2776 on September 26, 1988. The full Senate did not consider S. 2776 prior to adjournment of the 100th Congress.

On February 2, 1989, Senators Kerry, Lugar, and Lautenberg introduced S. 347, the Antiterrorism and Arms Export Amendments Act of 1989. It is virtually identical to the bill in the prior Congress.

On February 28, 1989, S. 347 was ordered to be reported favorably, without amendment, by the Committee on Foreign Relations.

Major Provisions

The principal provisions of the bill amend the Arms Export Control Act, the Foreign Assistance Act of 1961, the Export Administration Act of 1979, and the Hostage Act of 1868. Its major provisions amend the following sections of these statutes as follows:

Section 40 of the Arms Export Control Act, which prohibits exports of arms to terrorist states, is significantly reinforced. Prohibited transactions are listed in detail, both with respect to U.S. Government activities and private transactions. The President is authorized to waive the prohibitions for specific transactions, but only with prior, detailed reporting to Congress, on a classified basis if necessary.

In addition, revised section 40 authorizes the President to rescind the Secretary of State's determination that a country supports international terrorism if certain conditions are met. The President's rescission can become effective immediately if he reports to Congress that there has been a fundamental change in the leadership and policies of the government in question, or 30 legislative days after the President has submitted a report to Congress certifying that the government in question has not provided any support for international terrorism during the preceding 6-month period and that appropriate assurances have been given that such government will not support acts of international terrorism in the future.

Amended section 40 further provides the President with the conditional right to exercise the waiver authority of Section 614(a) of the Foreign Assistance Act of 1961 in connection with a section 40 prohibited activity, but only under exceptional circumstances

where time is of the essence and where the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives are fully consulted with and reported to prior to the use of that authority. Specifically, the President is authorized to exercise the 614(a) waiver only when he needs to act under that authority in less than 15 days. The President is required to begin consultation with Congress as soon as he determines to exercise the section 614(a) authority, but not less than 24 hours before that authority is exercised.

Amended section 40 also imposes criminal penalties on public and private parties who violate the prohibitions contained in this section.

—Section 36 of the Arms Export Control Act which requires certain reports to Congress on commercial and governmental military exports, is amended to require:

(1) quarterly reports listing all Presidential consents to transfers of Munitions List items exceeding $1 million in value from a recipient country to a third country under the authority of Sections 3(a) or 38 of the Arms Export Control Act or Section 505 of the Foreign Assistance Act of 1961;

(2) quarterly reports, classified if necessary, of interagency transfer of Munitions List items which will not ultimately be disposed of within the United States but excluding from the report those Munitions List items which are used solely in connection with intelligence activities and are subject to other reporting requirements under the National Security Act.

—Section 620A of the Foreign Assistance Act of 1961, the section of the act prohibiting assistance to countries supporting international terrorism, is amended to conform it with other changes in the law, particularly the revision of Section 40 of the Arms Export Control Act. There is a clarification that the President cannot use humanitarian reasons to justify a waiver of the antiterrorism prohibition for the purpose of providing any security assistance under Part II of the Foreign Assistance Act of 1961 or by the Export-Import Bank.

—Section 6(j) of the Export Administration Act, which regulates the export of goods and technology of military value to terrorist states, is amended to:

(1) remove the current $1 million annual threshold amount under which the Executive currently does not have to report to Congress the export of goods and technology of military value to terrorist states;

(2) require validated licenses for all such exports to terrorist states and 30-day prior notification to Congress of the proposed issuance of a validated license;

(3) conform the rescission authority with the rescission authority available under new Section 40 of the Arms Export Control Act and new Section 620 of the Foreign Assistance Act of 1961; and

(4) require that the Secretary of State's determination as to whether the export of goods and technology make a significant contribution to the military potential of a terrorism country or enhance the ability of such country to support acts of international terrorism be conjectural rather than one of certainty.

—The Hostage Act of 1868 is amended to clarify that the President's authority to take action to release hostages cannot be carried out in a manner which would otherwise be prohibited by law.

Committee Action

S. 347, introduced by Senators Kerry, Lugar, and Lautenberg, was referred to the Committee on Foreign Relations on February 2, 1989. The bill was ordered to be reported favorably without amendment, by voice vote on February 28, 1989.

Committee Comments

The one substantive change incorporated in the bill subsequent to its initial passage by the House of Representatives is to simplify the statutory language governing the definition of what is a terrorist state, deleting existing law's specific criteria of considering whether or not a state has granted sanctuary to a terrorist or terrorist group. In so doing, however, the committee emphasizes that it has no intention of narrowing the scope of the criteria which must be considered prior to making any determination as to whether a country has "repeatedly provided support for acts of international terrorism."

New section 6(j)(1) of the Export Administration Act of 1979 requires the Secretary of State to make a determination as to whether a country "has repeatedly provided support for acts of international terrorism." In making any such determination, it is clearly the intent of the committee that the Secretary's evaluation include, but not be limited to, the following criteria:

Allowing the use of its territory as a sanctuary from extradition or prosecution for terrorist activities;

Furnishing arms, explosives, or lethal substances to individuals, groups, or organizations with the likelihood that they will be used in terrorist activities;

Providing logistic support, such as transportation, to individuals, groups, or organizations involved with terrorist activities;

Providing safe houses or headquarters for any individuals, groups, or organizations involved with terrorist activities;

Planning, directing, providing training for, or assisting in the execution of terrorist activities;

Providing direct or indirect financial backing for terrorist activities; and

Providing direct or indirect diplomatic facilities such as support or documentation intended to aid or abet terrorist activities.

The committee further wishes to note that nothing in this legislation should be interpreted to impede the executive branch from imposing intermediate sanctions against any country which grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism. The committee also wishes to make clear that nothing in this legislation, including the amendments to Sections 40(A)(5) and 40(B)(1)(D) of the Arms Export Control Act, is to be interpreted to circumscribe the constitutional powers of the President to articulate U.S. foreign policy, to communicate with any foreign country concerning arms transfer that the foreign country might wish to make, and to recommend or concur

in courses of action taken by our allies and other foreign governments.

The committee also notes that the administration had serious objections to the original version of the House bill, H.R. 3651, because of its broad extraterritorial scope. The administration indicated that key allies would strongly object to the bill because it appeared to regulate the conduct of foreign nationals and corporations acting lawfully in their own countries. The administration indicated that the broad scope could not be reconciled with applicable principles of international law regarding extraterritoriality. In addition to these legal objections, the administration stated that such a provision could convert bilateral diplomatic efforts on combating terrorism on a cooperative basis into potentially divisive discussions on the extension of U.S. law extraterritorially.

The House made important changes to the bill prior to its initial passage in the House to accommodate these concerns of the administration and our allies. For example, the bill now makes it clear that the criminal and civil penalties prescribed in the bill apply to U.S. nationals who violate the prohibitions contained in the bill, and not foreign nationals or corporations overseas which are not subject to U.S. jurisdiction. This was always the intent of the legislation, since its goal is to control U.S. nationals who attempt to circumvent U.S. law by acting through foreign subsidiaries or countries (especially arms brokers who deal in foreign-made weapons that are not subject to U.S. export controls).

More importantly, the legislation makes it clear that the prohibitions apply to activities undertaken in foreign countries based primarily on regulations to be promulgated by the President. For example, new Section 40(b) of the Arms Export Control Act provides expressly that the key prohibitions apply to actions outside the United States "to the extent provided in regulations" issued by the President in accordance with the requirements of that section. This provision assures the President the latitude necessary to ensure that the law is implemented in a manner consistent with accepted notions of extraterritoriality.

During the committee's consideration of the bill, the administration expressed concern that the precise language used in the bill could be construed as establishing mandatory liability on the part of U.S. persons if foreign subsidiaries engage in any of the specified prohibited activities, even if the U.S. person did not know of or participate in the transaction and even if the transaction was lawful under local law and not covered by the implementing regulations. the administration stated that it understood that the bill was not intended to establish such mandatory liability, but rather to establish a scheme whereby the President would issue regulations clearly specifying which transactions are prohibited. Decisions on whether to prosecute in any given case would be made by the Justice Department based on all the facts involved, and prosecution would clearly not be expected when Justice declines to prosecute for sound prosecutorial reasons.

Because of the possible ambiguity in the bill on this matter, the administration first recommended that the language be modified to clarify the congressional intent. However, administration representatives and the committee agreed that an actual change in the

bill is not necessary for this purpose. It is clear that the liability language in section 40(b)(2) must be read in context with the other sections of the bill, especially section 40(b)(3). It is the clear intent of Congress that the bill be implemented in a manner consistent with the applicable principles of international law regarding extraterritoriality.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This section cites the title of the bill as the "Antiterrorism and Arms Export Amendments Act of 1989."

Section 2—Prohibition on Arms Transactions with Countries Supporting Terrorism.

Section 2(a) rewrites section 40 of the Arms Export Control Act (AECA).

Existing law—Section 40 prohibits the export of any items on the United States Munitions List to any country designated under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), unless the President determines that the export is important to the national interests of the United States and submits a report to Congress. Any such waiver shall expire at the end of 90 days unless Congress enacts an extension.

AMENDMENTS

Prohibited transactions by the U.S. Government—Section 40(a), as amended by this legislation, establishes a comprehensive list of prohibited transactions by the U.S. Government in connection with arms transfers to countries the Secretary of State determines have "repeatedly provided support for acts of international terrorism."

The U.S. Government is explicitly prohibited from:

(1) exporting or otherwise providing, by sale, lease or loan, grant, or other means, directly or indirectly, any munitions item to a "terrorist" country;

(2) providing credits, guarantees, or other financial assistance for the acquisition of any munitions item by such country;

(3) consenting to any transfer of any munitions item to such country;

(4) providing any license or other approval for any export or other transfer, including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement, of any munitions item to such country; and

(5) otherwise participating directly or indirectly in, or taking any action to facilitate, the acquisition of any munitions item by such country. This final prohibition applies to any Department, Agency, or other instrumentality of the U.S. Government and any officer or employee of the U.S. Government, including members of the U.S. Armed Forces, and any person acting at the request of or on behalf of the U.S. Government.

The provisions of section 40(a), as amended by this legislation, are not intended to circumscribe the President's constitutional powers to articulate U.S. foreign policy or to communicate with

any foreign country concerning arms transfers that the foreign government intends to make.

Waiver authority.—Section 40(a), as amended by this legislation, authorizes the Secretary of State to waive the prohibitions imposed under this section to allow an ongoing transaction to proceed, short of actual delivery, when he determines, after consultation with Congress, that unusual and compelling circumstances require an exception to the prohibitions. This waiver authority does not apply to arms transactions financed by the U.S. Government.

Prohibited transactions by U.S. Persons.—Section 40(b), as amended by this legislation, extends the prohibition of arms transactions to terrorist countries to U.S. persons and enumerates prohibited transactions by such persons as follows: exporting, selling, leasing, granting, or otherwise providing any munitions item to any country which the Secretary of State has determined has repeatedly provided support for acts of international terrorism, or to any government or person if the U.S. person has reason to know that the munitions item will ultimately be made available to a terrorist government or person acting on behalf of a terrorist government. Additionally, any action which would facilitate, directly or indirectly, the acquisition of any munitions item by a terrorist country or any person acting on behalf of a government that supports terrorism is prohibited. This last category of prohibited acts would cover such actions as financing, consulting, or providing information or advice relating to, administering, or otherwise facilitating or arranging the acquisition of munitions items.

The "reason to know" standard established by this subsection means that a person—

(1) has actual knowledge or is aware or substantially certain, or

(2) is aware of a high probability, which he consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary, that the munitions item will be made available to a terrorist country or that his action will facilitate the acquisition of the munitions item by the government of a terrorist country or any person acting on behalf of that government.

The prohibitions contained in this subsection apply to actions taken within or outside the United States by a U.S. person.

Transfers to governments and persons covered.—Section 40(c), as amended by this legislation, clarifies that the new section 40 prohibitions apply with respect to the acquisition of munitions items by the government of a terrorist country and the acquisition of munitions items by any individual, group, or other person within a terrorist country.

The committee intends that the reference in new section 40 to "the government of a country described in subsection (d)" be inclusive, encompassing any department, agency, or other instrumentality of the government, any officer or employee of the government (including any member of its armed forces), and any other person acting at the request or on behalf of the government of the terrorist country.

Section 40(c)(2), as amended by this legislation, makes clear that the prohibitions set forth in this legislation do not apply to actions by U.S. persons in relation to individuals, groups, or other persons

in a terrorist country who are acting in a strictly private capacity and who are not otherwise covered by the prohibitions in new Section 40(b)(1) of the Arms Export Control Act.

Determination of terrorist countries.—Section 40(d), as amended by this legislation, establishes that the Secretary of State has the discretionary authority to determine that the government of a country "has repeatedly provided support for acts of international terrorism," thereby triggering the prohibitions contained in amended section 40.

Publication of terrorist country determinations.—Section 40(e), as amended by this legislation, provides that each determination of the Secretary of State regarding a terrorist country shall be published in the Federal Register. This provision ensures that a public notice will be available for each future determination.

Rescission of determinations.—Section 40(f), as amended by this legislation, sets forth two alternative procedures under which the Secretary of State's determination that a government has repeatedly supported acts of international terrorism may be rescinded. The President may submit a report to Congress before the proposed rescission would take effect certifying that (1) there has been a "fundamental change in the leadership and policies" of the government, (2) the government has provided assurances that it is not supporting acts of international terrorism, and (3) the government will not support future acts of international terrorism. Alternatively, the President may issue a report at least 30 legislative days before the proposed rescission certifying that the government in question has not provided support for international terrorism during the preceding 6 months and that the government has provided assurances that it will not support future acts of international terrorism.

The second rescission procedure outlined above is similar to that contained in existing Section 6(j)(2) of the Export Administration Act of 1979.

Presidential waiver of prohibitions.—Section 40(g) of the Arms Export Control Act, as amended in this legislation, authorizes the President to waive the prohibitions contained in new section 40 with respect to a specific transaction if two criteria are met. The President must determine that the transaction is vital to the national security interests of the United States. Second, not later than 15 days prior to the proposed transaction the President is required to consult with and submit a report to the Congress detailing the nature and scope of the proposed transaction.

Exemption for transactions subject to National Security Act reporting requirements.—Section 40(h) of the Arms Export Control Act, as amended in this legislation, exempts from the prohibitions contained in new section 40 all transactions subject to reporting requirements under the National Security Act of 1947. Thus, in order to implement an overt transaction, the President would have to exercise his waiver authority under new section 40(g) of the AECA. In order to implement a covert transaction, the President would be required to use intelligence authorities and comply with the reporting requirements to Congress set forth in Title V of the National Security Act. In either case, Congress must be informed of transfer

of Munitions List items to a country on the Secretary of State's terrorist list.

Relation to other laws and use of Section 614(a) waiver authority.—Section 40(i) of the Arms Export Control Act, as amended by this legislation, establishes new section 40 of the AECA as the comprehensive prohibition in the U.S. Code on arms transfers to terrorist countries, with a narrow exception that allows the President to exercise waiver authority under Section 614(a) of the Foreign Assistance Act only in exceptional circumstances where time is of the essence. Specifically, the President is authorized to exercise the 614(a) waiver where the President wishes to provide munitions items to a terrorist country on very short notice; that is, in less than 15 days. This section further provides that the President begin consultation with the Congress as soon as he determines to exercise the section 614(a) authority, but not less than 24 hours before that authority is exercised. Finally, the President is required to submit a detailed report to Congress prior to the exercise of the waiver authority.

Criminal penalties.—Section 40(j) of the AECA, as amended by this legislation, establishes criminal penalties for the willful violation of the new section 40 prohibitions of a fine of not more than $1 million, imprisonment for not more than 10 years, or both. These penalties are identical to those found in section 38(c) of the AECA regarding violations of the munitions control export license requirements.

Civil penalties.—Section 40(k) of the AECA, as amended by this legislation, authorizes the President to impose civil penalties for violations of the prohibitions of new section 40 of the act and use powers virtually identical to those conferred by sections 11(c), 11(e), and 11(g) of the Export Administration Act of 1979. The only difference between the provisions in this legislation and those in the Export Administration Act is that a civil penalty under new section 40(k) is limited to $500,000, whereas the maximum penalty under Section 11(c) of the Export Administration Act of 1979 is $100,000. New section 40(k) of the AECA further provides that the enforcement powers conveyed in Section 12(a) of the Export Administration Act of 1979 will be available for prosecution under new section 40 of the AECA.

Definitions.—Section 40(l) of the AECA, as amended by this legislation, sets forth definitions of the terms "munitions item," "United States," and "United States person."

The definition of "munitions item" includes any item enumerated on the U.S. Munitions List, without regard to whether the item is imported into or exported from the United States. The purpose of the explicit inclusion of non-U.S. origin weapons and items is to capture transactions by the U.S. Government or U.S. persons worldwide where such transactions facilitate the transfer of non-U.S. origin military weapons and military-use items to terrorist countries.

The term "United States" is defined to mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

The definition of "United States person" sets forth four categories of persons covered by new section 40 of the AECA, as follows: (1) any citizen or permanent resident alien of the United States; (2) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States; (3) any other person to the extent of that person's actions in the United States; (4) and any person not covered above who is a foreign subsidiary or affiliate of a U.S. business entity or is otherwise "controlled in fact" by that U.S. business entity or is otherwise subject to the jurisdiction of the United States.

Conforming amendment.—Section 2(b) repeals Section 3(f) of the Arms Export Control Act to make the AECA consistent with the amendments of this act.

Section 3—Considerations in Issuance of Arms Export

LICENSES AND IN ARMS SALES

Section 3(a) amends Section 38(a)(2) of the Arms Export Control Act. Existing law in section 38(a)(2) requires that decisions about whether to issue an export license must be made in coordination with the Director of the U.S. Arms Control and Disarmament Agency (ACDA), taking into account the Director's opinion as to whether the export of a defense article "will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements." The amendment made by this section expands the Director's consideration to include his evaluation of whether the export of a defense article would support international terrorism.

Section 3(b) amends section 36(b)(1)(D) of the AECA to require the Director of ACDA to evaluate, and report on, the manner in which a proposed arms sale would support international terrorism.

Section 4—Exports to Countries Supporting Terrorism

Section 4 amends Section 6(j) of the Export Administration Act of 1979 to remove the current $1 million annual threshold amount under which the Executive currently does not have to report to Congress on exports of goods and technology to terrorist states. In addition, section 4 would require validated licenses for all such exports to terrorist states and a 30-day prior notification to Congress of the proposed issuance of such licenses. This section also conforms the rescission authority under section 6(j) with the rescission authority available under Section 40 of the Arms Export Control Act Act and Section 620A of the Foreign Assistance Act of 1961, each as amended by S. 347. Finally, section 4 would require that the Secretary of State's second determination under section 6(j)(1)(B) be one regarding whether the export of the goods and technology could, rather than would, make a significant contribution to the military potential of a terrorist country or could, rather than would, enhance the ability of such countries to support acts of international terrorism.

Section 5—Prohibition on Assistance to Countries

SUPPORTING INTERNATIONAL TERRORISM

Section 5 rewrites Section 620A of the Foreign Assistance Act of 1961.

Existing law—Section 620A of the Foreign Assistance Act of 1961 prohibits the provision of assistance under that act, the Agriculture Trade Development and Assistance Act of 1954, the Peace Corps Act, the Export-Import Bank Act of 1945, or the Arms Export Control Act to any country which the President determines (1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or (2) otherwise supports international terrorism. Section 620A(b) authorizes the President to waive this prohibition if he determines that national security or humanitarian reasons justify such waiver.

Amendments—Prohibition.—New section 620A(a) requires that the Secretary of State, rather than the President, make the determination that the government of a country "has repeatedly provided support for acts of international terrorism." This amendment conforms Section 620A of the Foreign Assistance Act of 1961 with similar amendments proposed to section 40 of the AECA and Section 6(j) of the Export Administration Act.

Publication of determinations.—New section 620A(b) establishes a new requirement that each determination of a terrorist country made by the Secretary of State, including each determination in effect on the date of enactment of this act, be published in the Federal Register.

Rescission authority.—New section 620A(c) sets forth procedures under which a determination by the Secretary that a country supports international terrorism may be rescinded. These procedures are identical to those provided under new section 40(f) of the AECA and new Section 6(j)(4) of the Export Administration Act of 1979.

Waiver authority.—New section 620A(d) restates existing law's authority for the President to waive the prohibition on assistance to countries supporting international terrorism contained in subsection (a) if he determines that "national security interests or humanitarian reasons" justify a waiver, but amends existing law to establish that humanitarian reasons may not be used to justify assistance under Part II of the Foreign Assistance Act of 1961 (relating to security assistance) or under the Export-Import Bank Act of 1945.

This section also establishes requirements for consulting with and reporting to Congress 15 days prior to any waiver taking effect. Finally, this section prohibits the use of the waiver authority under this section to provide any assistance under the Foreign Assistance Act which is also prohibited by new section 40 of the AECA.

Section 6—Designation of Items on the Munitions List

Section 6 amends section 38 of the Arms Export Control Act by adding a new subsection (h).

Existing law.—Section 38 of the AECA authorizes the President to designate defense articles and defense services and to promul-

gate regulations for the import and export of such articles and services. The items designated constitute the U.S. Munitions List.

Amendments.—Section 6 adds a new subsection (h) to section 38 which provides that the designation by the President or his designee of items on the Munitions List shall be final and conclusive for purposes of this section and section 40 and shall not be subject to judicial review.

Section 7—Quarterly Reports on Third Country Transfers and on DOD Transfers to Other Agencies

Section 7 amends Section 36(a) of the Arms Export Control Act.

Existing law.—Section 36(a) of the AECA requires the submission of quarterly reports to Congress on certain commercial and governmental military exports.

Amendment.—Section 7 adds two new categories to the existing quarterly reporting requirements:

(1) a listing of all consents to third-party transfers of defense articles or defense services granted during the quarter the value of which is $1 million or more; and

(2) a listing of all munitions items which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the U.S. Government if the value of the munitions items is $250,000 or more, or if the value of all munitions items transferred to a particular department, agency, or other entity during the quarter was $250,000 or more.

This section excludes munitions items transferred for disposition or use solely within the United States or munitions items transferred for use in connection with intelligence activities which are subject to reporting requirements under Title V of the National Security Act of 1947, from the scope of this quarterly reporting requirement. The committee does not intend that the reporting requirement apply to transfers between the various Departments and Agencies which comprise the Department of Defense.

Section 8—Special Authority

Section 8 amends Section 614(c) of the Foreign Assistance Act of 1961.

Existing law.—Section 614(c) of the Foreign Assistance Act of 1961 authorizes the President to use up to $50 million of funds made available under the act upon his certification that "it is inadvisable to specify the nature of the use of such funds." Upon exercising this authority, the President is required to inform promptly and fully the Speaker of the House of Representatives and the chairman and ranking minority member of the Senate Foreign Relations Committee as to the use of such funds.

Amendment.—Section 8 modifies the requirement for congressional notification to require that the President fully inform the chairman and ranking minority member of the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations prior to the use of any funds under this subsection.

Section 9—Hostage Act

Section 9 amends the Hostage Act of 1868.

Existing law.—The Hostage Act of 1868 requires that, wherein a U.S. citizen has been unjustly imprisoned by a foreign government, the President shall demand of the foreign government the reasons for the imprisonment, and if such imprisonment appears in violation of the rights of American citizenship, the President shall demand the release of such citizen. If the demand for release is unreasonably delayed or refused, the President is directed to take necessary and proper means, short of acts of war, to obtain the release of such citizen, and shall communicate his actions in this regard to Congress.

Amendment.—Section 9 inserts a clarifying phrase into the Hostage Act to assure that such means as the President may employ under this authority are not means which are prohibited by other U.S. laws.

Section 10—Self-Defense in Accordance with International Law

Section 10 states that for purposes of the amendments made by this act, the use by any government of armed force in the exercise of self-defense in accordance with applicable international agreements and customary international law shall not be considered an act of international terrorism.

Congressional Budget Office Cost Estimate

In accordance with rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides the following estimate of the cost of S. 347, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 8, 1989.

Hon. Claiborne Pell,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 347, Antiterrorism and Arms Export Amendments Act of 1989, as ordered reported by the Senate Committee on Foreign Relations on February 28, 1989. The bill restates and strengthens the prohibitions in current law on the export of munitions to countries providing support for acts of international terrorism. Enactment of this legislation is estimated to have no cost to Federal, State, or local governments.

Should the committee so desire, we would be pleased to provide further details. Your staff may contact Kent Christensen at 226–2840 for answers to any questions you may have.

Sincerely,

Robert D. Reischauer,
Director.

Regulatory Impact Statement

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has concluded that there is no regulatory impact from S. 347.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ARMS EXPORT CONTROL ACT

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SEC. 3. ELIGIBILITY.

(a) * * *

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[(f)(1) Unless the President finds that the national security requires otherwise, he shall terminate all sales, under this Act to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism. The President may not thereafter make or extend sales, to such government until the end of the one year period beginning on the date of such termination, except that if during its period of ineligibility for sales, pursuant to this section such government aids or abets, by granting sanctuary from prosecution to, any other individual or group which has committed an act of international terrorism, such government's period of ineligibility shall be extended for an additional year for each such individual or group.

[(2) If the President finds that the national security justifies a continuation of sales to any government described in paragraph (1), he shall report such finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.]

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SEC. 36. REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS: CONGRESSIONAL ACTION.

(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee Foreign Relations of the Senate not more than sixty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter

of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, *and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum*) containing—

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(7) * * *

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(8) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 39, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report; **[**and**]**

(9) a listing of each sale under section 29 during the quarter for which such report is made, specifying (A) the purchaser, (B) the United States Government department or agency responsible for implementing the sale, (C) an estimate of the dollar amount of the sale, and (D) a general description of the real property facilities to be constructed pursuant to such sale**[**.**]**; *and*

(10) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is $1,000,000 or more; and

(11) a listing of all munitions items (as defined in section 40(l)(1)) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States State Government during the quarter for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

(A) the value of the munitions items was $250,000 or more; or

(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was $250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(b)(1) * * *

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(D) an evaluation, prepared by the Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense, of the manner, if any, in which the proposed sale would—

(i) contribute to an arms race;

(ii) support international terrorism;

[(ii)] *(iii)* increase the possibility of an outbreak or escalation of conflict;

[(iii)] *(iv)* prejudice the negotiation of any arms controls; or

[iv] *(v)* adversely affect the arms control policy of the United States;

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SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.

(a)(1) * * *

(2) Decisions on issuing export licenses under this section shall be made in coordination with the director of the United States Arms Control and Disarmament Agency and shall take into account the Director's opinion as to whether the export of an article will contribute to an arms race, *support international terrorism,* increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.

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(g) * * *

(h) The designation by the President (or by an official to whom the President's functions under subsection (a) have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall be final and conclusive for purposes of this section and section 40 and shall not be subject to judicial review.

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[SEC. 40. EXPORTS TO COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

[(a) PROHIBITION.—Except as provided in subsection (b), items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

[(b) WAIVER.—The President may waive the prohibition contained in subsection (a) in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.]

SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.—The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement), of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to

any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.—

(1) IN GENERAL.—A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or persons.

(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.—A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

(3) APPLICABILITY TO ACTIONS OUTSIDE THE UNITED STATES.—Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (l)(3)(A) and (B). To the extent provided in regulations issued under subsection (l)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.—This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d) COUNTRIES COVERED BY PROHIBITION.—The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

(e) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

(f) RESCISSION.—A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(1) before the proposed rescission would take effect, a report certifying that—

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) that government is not supporting acts of international terrorism; and

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 30 legislative days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

As used in paragraph (2), the term "legislative day" means a day on which both Houses of Congress are in session.

(g) WAIVER.—The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is vital to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to

be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is vital to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS.—The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) RELATION TO OTHER LAWS.—

(1) IN GENERAL.—The provisions of this section shall apply notwithstanding any other provision of law, except as provided in paragraph (2).

(2) SECTION 614(a) WAIVER AUTHORITY.—The authority of section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)) may be used to permit a transaction under the Foreign Assistance Act of 1961 or the Arms Export Control Act which is otherwise prohibited by this section if—

(A) there are exceptional circumstances where time is of the essence which require that the provisions of this section be waived without complying with the requirement of subsection (g) of this section that there be a 15-day period of advance consultation and reporting;

(B) the President begins the consultation with the Congress (required by section 614(a)) as soon as the President determines to exercise the authority of section 614(a), but not less than 24 hours before that authority is exercised;

(C) the President submits the report described in subsection (g)(2)(B) of this section not less than 24 hours before that authority is exercised; and

(D) all of the requirements of section 614(a) are otherwise fully met.

(j) CRIMINAL PENALTY.—Any person who willfully violates this section shall be fined for each violation not more than $1,000,000, imprisoned not more than 10 years, or both.

(k) CIVIL PENALTIES; ENFORCEMENT.—In the enforcement of this section, the President is authorized to exercise the same powers con-

cerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(g) of the Export Administration Act of 1979 (subject to the same terms and conditions as are applicable to such powers under that Act), except that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000.

(l) DEFINITIONS.—As used in this section—

(1) the term "munitions items" means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term "United States", when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

(3) the term "United States person" means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States,

with respect to that person's actions while outside the United States.

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EXPORT ADMINISTRATION ACT OF 1979

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SEC. 6. (a) AUTHORITY.

(1) * * *

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[(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more

than $1,000,000 to any country concerning which the Secretary of State has made the following determinations:

[(A) Such country has repeatedly provided support for acts of international terrorism.

[(B) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorims.

[(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, as least 30 days before the proposed rescission would take effect, submits to the Congress a report justifying the rescission and certifying that—

[(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

[(B) the country concerned has provided assurances that it will not support acts of international terrorism in the future.]

(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1988, shall be published in the Federal Register.

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorisms; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 30 legislative days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

As used in subparagraph (B), the term "legislative day" means a day on which both Houses of Congress are in session.

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THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

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PART I

Chapter 1—Policy; Development Assistance Authorizations

SEC. 101. GENERAL POLICY.

(a) * * *

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SEC. 614. SPECIAL AUTHORITIES.

(a)(1) * * *

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(c) The President is authorized to use amounts not to exceed $50,000,000 of the funds made available under this Act pursuant to his certification that it is inadvisable to specify the nature of the use of such funds, which certification shall be deemed to be a sufficient voucher for such amounts. [The President shall promptly and fully inform the Speaker of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection.] *The President shall fully inform the chairman and ranking minority member of the Committee on Foreign Affairs of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection prior to the use of such funds.*

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[SEC. 620A. PROHIBITION ON ASSISTANCE TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

[(a) The United States shall not provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, the Export-Import Bank Act of 1945, or the Arms Export Control Act to any country which the President determines—

[(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or

[(2) otherwise supports international terrorism.

[(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and at least 15 days before the waiver takes effect, shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of the waiver (including the justification for the waiver) in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of this Act.

[(c) If sanctions are imposed on a country pursuant to subsection (a) because of its support for international terrorism, the President should call upon other countries to impose similar sanctions on that country.]

SEC. 620A. PROHIBITION ON ASSISTANCE TO GOVERNMENTS SUPPORTING INTERNATIONAL TERRORISM.

(a) PROHIBITION.—The United States shall not provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act of 1945 to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

(b) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (a), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1988, shall be published in the Federal Register.

(c) RESCISSION.—A determination made by the Secretary of State under subsection (a) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(1) before the proposed rescission would take effect, a report certifying that—

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) that government is not supporting acts of international terrorism; and

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 30 legislative days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(A) the government concerned has not provided any support for international terrorism during the proceding 6-month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

As used in paragraph (2), the term "legislative day" means a day on which both Houses of Congress are in session.

(d) WAIVER.—Assistance prohibited by subsection (a) may be provided to a country described in that subsection if—

(1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a), except that humanitarian reasons may not be used to justify assistance under part II of this Act (including chapters 4, 6, and 8), or the Export-Import Bank Act of 1945; and

(2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing—

(A) the name of the recipient country;

(B) a description of the national security interests or humanitarian reasons which require the waiver;

(C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and

(D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under the Foreign Assistance Act of 1961 which is also prohibited by section 40 of the Arms Export Control Act.

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SECTION 2001 OF THE REVISED STATUTES

SEC. 2001. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war *and not otherwise prohibited by law,* as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

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